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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,950	09/25/2003	R. Eric Montgomery	P1087US02	7057

53096 7590 01/12/2007  
DISCUS DENTAL IMPRESSIONS, INC.  
8550 HIGUERA STREET  
CULVER CITY, CA 90232

EXAMINER
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BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/670,950

Applicant(s)

MONTGOMERY, R. ERIC

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-20,25-42 and 51-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration:
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-20,25-42 and 51-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18, 25, 26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Green (5,829,976). Green discloses a therapeutic dental delivery device comprising a liquid oral therapeutic dental composition (column 1 line 67), an applicator of a brush (column 1 line 14), an activator 32 of a push button and a reservoir 30 located between the applicator and configured to store the composition, a cap 14 having an open end terminating at a position between the activator and the applicator, the activator the activator is configured to dispense the composition from the reservoir to the applicator. The reservoir is confined within a removable cartridge (column 4 line 8). The device is made of plastic.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grace (1,362,937) in view of Marx (1,041,315). Grace discloses a therapeutic dental delivery device comprising a dental composition (page 1 line 50), an applicator 30 of a brush, an activator

(page 2 line 61) and a reservoir 26 located between the applicator and the activator and configured to store the composition, the activator is configured to dispense the composition from the reservoir to the applicator; however, Grace does not show a cap. Marx teaches a dental device comprising a cap for covering the applicator having an open end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the device with the cap of Marx in order to protect the brush from dust and impurities in view of Marx. It would have been obvious to one of ordinary skill in the art made as to the specific activator, since interchanging of click, push button, or twist mechanism in the device involves only routine skill in the art and Grace suggests other mechanical embodiments. Grace shows the reservoir is confined within a removable cartridge.

5. Claims 19, 20, 27, 29, 30, 32, 34-37, 42, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Matthews et al. (2003/0232310). Green discloses a device that shows the limitations as described above; however, Green does not show the composition. Matthews et al. teach a device comprising a liquid oral therapeutic dental composition comprising a moisture sensitive polymer complex and a water soluble salt and hydrogen peroxide or carbamide peroxide [0020]-[0022]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Green to have the composition of Matthews et al. in order to whiten or bleach one or more teeth. Green shows the reservoir is confined within a removable cartridge (column 4 line 8). Green shows the device at least in part made from thermoplastic material (column 4 line 22). The reservoir is located in a body section, the cap is in frictional engagement with the body. It would have been an obvious matter of choice to one of ordinary skill in the art to have a retractable applicator in

Art Unit: 3732

lieu of a cap in order to cover the applicator. Matthews et al. teach having instructions in order to show how to use the composition. It would have been obvious to one of ordinary skill in the art as to the intended use of the composition as it comprises the carrier and agent as claimed.

6. Claims 19, 20, 27, 29, 30, 32, 34-37, 42, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grace in view of Marx and further in view of Matthews et al. The modified device discloses a device that shows the limitations as described above; however, they do not show the composition. Matthews et al. teach a device comprising a liquid oral therapeutic dental composition comprising a moisture sensitive polymer complex and a water soluble salt and hydrogen peroxide or carbamide peroxide [0020]-[0022]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device to have the composition of Matthews et al. in order to whiten or bleach one or more teeth. It would have been an obvious matter of choice to one of ordinary skill in the art to have a retractable applicator in lieu of a cap in order to cover the applicator. Matthews et al. teach having instructions in order to show how to use the composition.

7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grace in view of Marx and further in view of Dragan (6,929,475). The modified device discloses a device that shows the limitations as described above; however, they do not show plurality of bristles aligned generally parallel with lengthwise direction of the device. Dragan teaches a dental device comprising an applicator with plurality of bristles 246 aligned generally parallel with lengthwise direction of the device the composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device to have the applicator of

Dragan in order to apply material between teeth and to gum at base of the teeth in view of Dragan.

8. Claims 33, 38-41, and 53-58 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Green or Grace and Marx in view of Matthews et al. and further in view of Fischer et al. (6,083,489). The modified device shows the limitations as described above; however, they do not show gel carrier polymer including polyvinylpyrrolidone. Fischer et al. teach carrier including carboxypolymethylene and polyvinylpyrrolidone (column 8 line 20). It would have been obvious to one having ordinary skill in the art to further modify the device to include the thickener of Fischer et al. to provide bulk and suitable consistency to the carrier in view of Fischer et al. Fischer et al. show a polysaccharide polymer of xanthan gum, it would have been obvious to one of ordinary skill in the art to have a polymer of gellan gum.

#### ***Specification***

9. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

#### ***Drawings***

10. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the an applicator of a roller ball, applicator being retractable, an activator of a click mechanism, a push button, and a twist and ratchet mechanism, a reservoir between the applicator and the activator, and a removable cartridge must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Response to Arguments***

11. Applicant's arguments filed October 23, 2006 have been fully considered but they are not persuasive. Green shows the limitations as claimed. Applicant's arguments with respect to claims 19, 20, 27, 29-42, and 51-58 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriquez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner  
Primary Examiner